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IN THE

Supreme Court of the United States

October Term, 1940
No. 226.

WILLIAM DOSTER NOLAND,

Petitioner,

vs.

VYOLA BUBB NOLAND, also known as Vyola Bubb Loughman, and WILFRED L. FARRAR,

Respondents.

Reply Brief of Petitioner to Answer to Petition for Writ of Certiorari by Respondents.

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Reply Brief of Petitioner to Answer to Petition for Writ of Certiorari by Respondents.

On December 23, 1937, petitioner after having formerly made an application for an amended decree of divorce to Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, which was granted [R. 48-51], counsel for respondent Vyola Bubb Noland notified her of such application being filed and served in accordance with the laws of the State of Nevada, and she instructed her counsel to default said application [R. 59], and said respondent on December 27, 1937, had a temporary restraining order issued without a return date and without notice, four days only after decree of said amended divorce decree, and said temporary restraining order is now effective and has been at all times since issued [R. 21-24], all of which is evident that said respondent was well aware of the fact that application was made for amended decree

of divorce, and coupled to said conditions, the Supreme Court of the United States have held in a number of cases that under the full faith and credit clause of the Constitution, a sister-state judgment cannot be impeached, but that such attack must be made in the state where the judgment was rendered:

Christmas v. Russell, 5 Wall. 290 (1866);
Maxwell v. Stewart, 21 Wall. 77 (1875);
Simmons v. Saul, 138 U. S. 439 (1891).

On page 3, paragraph 7, of respondent' answer to petition for writ of certiorari, it sets forth, as follows:

> "7. On April 14, 1938 (after hearing on March 24, 1938), the Superior Court of the State of California, in and for the County of Ventura, rendered judgment denying the prayer of the petitioner, increasing the amount to be paid for the support of the child *and allowing costs and attorney's fees to respondent, Mrs. Loughman.* [Rec. 10-12; 91, par. 11.]"

Petitioner hereof has made no reference to contract feature relative to the support of the minor child, William Doster Noland, Jr., but does, however, refer to the said respondent (Mrs. Loughman) Vyola Bubb Noland applying to the said California court for attorney's fees and costs, when she had signed and executed a contract on the sixth (6th) day of December, 1934, and sworn to before a Notary Public on the 13th day of December, 1934 [R. 41-45] and (Pet. for Writ, 11-12), wherein the Seventh paragraph of said contract reads as follows:

> "Seventh: First Party (meaning petitioner hereof) does hereby release any and all claims to the sum of approximately $1200.00 heretofore obtained

> by Second Party (meaning respondent Vyola Bubb Noland, now Mrs. Loughman) from the safety box of the parties hereto, *said sum being accepted by Second Party in full satisfaction of all claims for alimony, either temporary or permanent, costs or attorney's fees in any action for divorce or separation now pending, or in any action, or actions which either party may maintain against the other in the future*, and said sum is further accepted in full satisfaction of any and all claims of every kind, nature and description which Second Party now has or may hereafter have against First Party, except as otherwise provided herein."

Under the contract clause of the Constitution of the United States:

> *Const. U. S. A.*, Article I, Section 10,

said clause of the Constitution prohibits the impairment of obligations of contracts, and the impairment of contracts may not be accomplished by judicial decisions or by legislative enactments:

> *Pine Grove v. Talcott*, 19 Wall. 666;
> *Union Bank v. Geary*, 5 Pet. 99,

and the degree of impairment is immaterial, as in

> *Farrington v. Tennessee*, 95 U. S. 683,

the court said that—

> "the amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provision and the judicial power of the court to redress the wrong."

And on page 4, under title of Argument, answer to petition for writ, respondents cite the case of *Rooker v. Fidelity Trust Co.*, 263 U. S. 413, 44 Sup. Ct. 149, which

is not in point to the case hereof before the court, because the record shows that respondent Vyola Bubb Noland testified falsely in an affidavit [R. 86-93] and particularly in the record [R. p. 92, par. 13], wherein she stated that petitioner did not introduce in evidence of the aforesaid contract and proceedings of the aforesaid Nevada court in the aforesaid California court, when the record shows an entirely different condition, which is that petitioner hereof, as the record shows [R. 57-60; R. par. IV, subds. 1, 2, pp. 65-68], did introduce the said contract and Nevada proceedings before said California court, and in a leading case of an identical legal status such as we have here before the court in this case, the parties were enjoined from taking advantage of their successful judgment in a state court wherein the successful party had testified falsely as has been done by the respondent Vyola Bubb Noland in the record hereof in her affidavit in support of motion to dismiss in the District Court below, which is sufficient to undermine the judgment:

> *Chicago, Rock Island & Pacific Railway v. Callicotte* (C. C. A. 8), 267 Fed. 799, 16 A. L. R. 386,

and on page 8 of answer to petition for writ, respondent cites cases of *Van Weel v. Winston*, 115 U. S. 228, and *Fogg v. Blair*, 139 U. S. 127, which both cases are not applicable to the matter hereof, because the record shows a contractual provision made by contract in the State of Nevada, which has been fraudulently violated by respondent Vyola Bubb Noland, and constitutes a fraud and a breach of trust, which a court of chancery can give relief and has jurisdiction to give relief, and courts of equity have jurisdiction to relieve in all cases of fraud:

> *Tyler v. Savage*, 143 U. S. 79 (12 Sup. Ct. 340), 36 L. ed. 82,

and allegations of fraud have been held sufficient for hearing before the District Court:

Holton v. Davis (C. C. A. 9), 108 Fed. 138, 149,

and in the case of

Graver v. Faurot (C. C. A. 7), 76 Fed. 257,

an action was brought in the Federal District Court to set aside a former Illinois State Court decree; the District Court below had dismissed the complaint, and the Circuit Court of Appeals reversed it, saying:

> "The decree of the Circuit Court is reversed and the cause remanded with direction to overrule the motion to dismiss the bill,"

and cited cases of

Marshall v. Holmes, 141 U. S. 589, 35 L. ed. 870;
U. S. v. Throckmorton, 98 U. S. 61, 25 L. ed. 93.

The record from the District Court, Circuit Court of Appeals and petition shows local prejudice, discriminating affluence and influence against petitioner hereof, and the bill also provides for amendment to bring in other fictitious named parties which have been denied petitioner.

Conclusion.

Wherefore, for the foregoing reasons as set forth herein, in the record, petition and supporting brief, it is respectfully urged and submitted that the writ of certiorari be issued in the above entitled matter as prayed.

Respectfully submitted,

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CALVIN S. MAUK,
Of Counsel.

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Respondents.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

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ANSWER TO PETITION FOR WRIT OF CERTIORARI.

BRIEF RESTATEMENT OF FACTS AND PREVIOUS PROCEDURE.

A very succinct and uninvolved restatement of the facts and procedures in this cause will be sufficient to enable the court to pass upon the petition for writ of certiorari.

1. On December 15, 1934, respondent, Mrs. Loughman (Vyola Bubb Noland), secured a divorce from petitioner in Nevada. In the decree she was granted custody of the then two-year-old child. Petitioner was ordered to pay monthly support for the child. [Rec. 45-46; 87.]

2. Immediately thereafter, respondent, Mrs. Loughman, with the child, took up residence in California and has since resided there continuously. Petitioner has at all times relevant to this case resided in California. [Rec. 5 and 6; 87 and 88, par. 3.]

3. On October 3, 1935, petitioner submitted to the jurisdiction of the Superior Court of the State of California, in and for the County of Ventura, asked for modification of the Nevada decree. Respondent, Mrs. Loughman, answered and asked for increased support for the child by way of affirmative relief, setting forth matters subsequent to the Nevada decree. [Rec. 6-7; 88, par. 4.]

4. On December 23, 1937, petitioner, while his case before the Superior Court of the State of California was still pending, went to Nevada and secured an amended decree giving him complete custody of the child. Neither the child nor the respondent, Mrs. Loughman, was present, and she authorized no one to appear for her. [Rec. 8-9; 48; 89, par, 8.]

5. Petitioner returned to California. The Superior Court of the State of California then issued an order restraining petitioner from taking custody of the child pending a decision of the case instituted by him. [Rec. 21, *et seq.*]

6. Petitioner sought a writ of prohibition from the District Court of Appeals of the State of California prohibiting the Superior Court from continuing with his case on the ground that the Superior Court had no jurisdiction.

On March 23, 1938, an alternative writ was issued, which, however, did not restrain the court from proceeding with the pending case.

On June 3, 1938, the alternative writ was dscharged and petitioner's motion was denied. [Rec. 21, *et seq.*; 123-124.]

Noland v. Superior Court, 26 Cal. App. (2d) 708; 80 Pac. (2d) 76.

(Petition for rehearing denied; application to have cause heard by Supreme Court of the State of California denied.)

Petitioner made no attempt to secure a review by the Supreme Court of the United States.

7. On April 14, 1938 (after hearing on March 24, 1938), the Superior Court of the State of California, in and for the County of Ventura, rendered judgment denying the prayer of the petitioner, increasing the amount to be paid for the support of the child and allowing costs and attorney's fees to respondent, Mrs. Loughman. [Rec. 10-12; 91, par. 11.]

8. Petitioner made a motion to vacate this judgment which was denied. Petitioner *did not take an appeal* from this judgment of the Superior Court to the higher courts of the State of California. The time for such an appeal, of course, has long since expired. [Rec. 92, pars. 14 and 13.]

9. Accrued, unpaid installments for support were assigned by respondent, Mrs. Loughman, to respondent, Mr. Farrar, for collection. Certain proceedings were had with the end in view of enforcing judgment. [Rec. 93, par. 16.]

10. With these facts as a background, the petitioner filed his "Civil Bill of Complaint in Equity" in the District Court of the United States for the Southern District of California, Central Division. This bill was dismissed by the District Court without leave to amend, on the ground that the District Court had no jurisdiction. This decision was affirmed by the United States Circuit Court of Appeals for the Ninth Circuit.

ARGUMENT.

I.

Petitioner's Bill in Equity An Attempt to Have District Court of the United States Exercise Appellate Powers.

Petitioner's chief purpose in his bill in equity was an attempt to have the District Court of the United States review the decision of the Superior Court of the State of California which increased the child's support allowance and the decision of the District Court of Appeals of the State of California (hearing denied by the Supreme Court of the State of California) which denied a writ of prohibition directed against the Superior Court.

The District Court of the United States has no jurisdiction to exercise such a power. The Circuit Court of Appeals affirmed the District Court's decision on this ground. [Rec. 122, *et seq.*] Judge Stephens' citations are conclusive on this point.

> *Rooker v. Fidelity Trust Co.*, 263 U. S. 413; 44 Sup. Ct. 149. [Quoted by Judge Stephens, Rec. 125.]

The petition for writ of certiorari and brief in support thereof have ignored this procedural bar to the action in the District Court. Although it is felt that this point is conclusive, nevertheless brief consideration will be given to petitioner's claims, as far as they can be ascertained.

II.

Petitioner's Claims of Jurisdiction in the District Court of the United States Unfounded.

1. Obligation of Contract Not Involved in the Case.

In his petition and brief, petitioner mentions a contract. (Pet. 38-39.) This contract was one between petitioner and respondent, Mrs. Loughman, in which they agreed upon the amount of money to be paid for the support of the child. The contract was referred to by, but not incorporated in, the Nevada decree. No court is bound by such a contract when considering the welfare of a child.

> *Adams v. Adams,* 2 Cal. App. (2d) 173, 37 Pac. (2d) 729.

The constitutional prohibition is directed against the state legislature and not against the judiciary.

> *McCoy v. Union El. R. Co.,* 247 U. S. 354, 38 Sup. Ct. 504.

2. Petitioner's Claim of Violation of the "Full Faith and Credit" Clause of the Constitution of the United States Is Unfounded.

Petitioner claims that the decision of the Superior Court of the State of California was void because it failed to give full faith and credit to the Nevada decrees. The District Court of the United States in its memorandum gave consideration to this point. Judge McCormick asserted that the forum state (California) need give no

greater credit to the decrees of the foreign state (Nevada) than does the foreign state. Since the decrees were subject to modification in the foreign state they could be so modified in the forum state. [Rec. 96-103.]

Other doctrines have been promulgated by various courts which support the actions of the Superior Court of the State of California under the facts of this case.

a) The forum state is not in any way bound by decrees of a foreign state relating to the support and maintenance of a minor child, resident of the forum state at the time of inquiry.

Seeley v. Seeley, 30 App. Dec. 191, 12 Ann. Cas. 1058; 209 U. S. 544 (Certiorari denied).

b) The forum state may, on grounds of comity, follow the decree of the foreign state where no change of circumstances concerning the welfare of the child has taken place since the rendition of the foreign decree, but the decree of the foreign state is never a bar to inquiry as to the best interests of the child, and a question may arise where, even though no changed circumstances could be found, nevertheless the welfare of the child might require the court to change the decree of the foreign state.

Anthony v. Tarpley, 45 Cal. App. 72; 187 Pac. 779;

Foster v. Foster, 8 Cal. (2d) 719, 728; 68 Pac. (2d) 719;

Titcomb v. Superior Court, 220 Cal. 34, 39; 29 Pac. (2d) 206.

c) The forum state shall give full faith and credit to the divorce decrees of a foreign state dealing with support of a minor child at the time and under the circumstances of its rendition, but such a decree has no controlling effect in the forum state as to facts and conditions arising subsequently to the date of the foreign decree. In the instant case there were changed conditions. [Rec. 102.]

Heavren v. Spicer, 265 Fed. 977;

Foster v. Foster, 8 Cal. (2d) 719; 68 Pac. (2d) 719.

d) The status of the child is the *res*, and the only court which has the power to alter this status is the court in which the minor is domiciled. The *res* follows the domicile of the child.

34 *Harvard Law Review* 50, 59;

Boens v. Bennett, 20 Cal. App. (2d) 477, 480; 67 Pac. (2d) 715;

State v. Larson, 252 N. W. 329 (Minn., 1934).

3. No Conspiracy to Deny Petitioner Equal Protection of the Laws or Immunities of a United States Citizen.

Apparently another claim of petitioner is that the District Court of the United States had jurisdiction on the ground that his bill in equity alleged a conspiracy upon the part of respondents to deprive petitioner of his "rights and privileges as a citizen of the United States" and to deprive him of the equal protection of the laws. (Pet. 7-8, citing U. S. C.)

The allegations in petitioner's bill were conclusions of law which could not have been and were not supported by ultimate or evidentiary facts. The remarks and quotations of Judge Stephens in his opinion [Rec. 125] clearly and sufficiently set forth the law in this regard:

> "The complaint is subject to much the same objection as called forth the following from the court in the case of Van Weel v. Winston, 115 U. S. 228:
>
> 'It (the complaint) is full of the words "fraudulent" and "corrupt", and general charges of conspiracy and violation of trust obligations. Mere words, in and of themselves, and even as qualifying adjectives of more specific charges, are not sufficient grounds of equity jurisdiction, unless the transactions to which they refer are such as in their essential nature constitute a fraud or a breach of trust for which a court of chancery can give relief.'
>
> See, also, Fogg v. Blair, 139 U. S. 127."

Furthermore, all parties were citizens and residents of California. Privileges of United States citizens were not involved. All petitioner's rights as a citizen of the State of California were open to him. Of some he took advantage.

III.

Accepted and Usual Course of Judicial Proceedings Followed by the Circuit Court of Appeals and District Court.

1. Dismissal of Petitioner's Bill in Equity Proper Procedure.

Petitioner contends that the Circuit Court and the District Court did not follow the correct judicial procedure. (Pet. 43.) The procedure followed by respondents in moving for a dismissal of the bill in equity and by the District Court in dismissing said bill was in conformity with the Rules of Civil Procedure of the District Court of the United States. The old equity rules have been superseded by the new rules of procedure which govern all suits whether cognizable in law or equity.

> Rule 1, Rules of Civil Procedure of the District Court of the United States.

The rules provide a method of attacking a complaint or bill upon the ground that the court has no jurisdiction. This method was followed by respondents.

> Rule 12b, Rules of Civil Procedure of the District Court of the United States.

2. Dismissal of Bill in Equity Without Leave to Amend Not Error.

In subdivision IV of his brief (Pet. 45) petitioner claims that the District Court could not dismiss his action without leave to amend. Such a procedure, petitioner claims, would be a denial to him of due process of law. Petitioner cites, in support of his claim, *U. S. v. Lehigh Valley R. R. C.*, 220 U. S. 257, 31 Sup. Ct. 387.

Far from upholding petitioner's claim, this case affirms the rule that "the allowance of amendments to pleadings is discretionary with a trial court . . .," saying, "the principle is elementary . . ." (page 390 of Sup. Ct.) In that particular case the principle was held not applicable because "the discretion of the court below was controlled by the action of this Court (Supreme Court of the United States). The case of *Kendig v. Deane*, 97 U. S. 423, cited by petitioner, is easily distinguished.

In any event, no abuse of discretion was claimed by petitioner when he appealed to the Circuit Court of Appeals. None is claimed here, nor can be. All the material facts (and many more immaterial and scandalous assertions) were placed before the District Court by the pleadings, affidavits and motions. No amendment could have added anything further.

Conclusion.

It is respectfully submitted that there are no special or important reasons for granting a writ of certiorari in this case. The Circuit Court of Appeals and the District Court correctly determined that the District Court had no jurisdiction. Their determination is in accord with the decisions of the United States Supreme Court, the Circuit Courts of Appeal and local courts. The Circuit Court of Appeals and the District Court followed the accepted and usual course of judicial proceedings.

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